

The background features a stylized illustration of three books. On the left, there are two books with green covers and white pages, standing upright. To their right is a single book with a red cover and white pages, leaning at an angle. The books are rendered with simple outlines and flat colors.

# **Minnesota Court of Appeals**

## **Significant Decisions**

**September 2011-August 2012**

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## PART I – CIVIL CASES

### Administrative Law

***Anderson v. Commissioner of Health*, 811 N.W.2d 162 (Minn. App. Jan. 30, 2012), review denied (Minn. Apr. 17, 2012) (A11-0754).**

A health-care worker convicted of criminal sexual conduct and disqualified from providing direct-care health services at state-licensed facilities has no statutory right to have his disqualification reconsidered by the commissioner of health under Minnesota Statutes section 245C.29 to determine whether he poses a risk of harm to patients, because the commissioner has no discretion to set the disqualification aside.

***In re Board of Managers of Bois de Sioux Watershed Dist.*, 818 N.W.2d 583 (Minn. App. July 23, 2012) (A11-1875).**

In order to acquire jurisdiction to proceed with a redetermination of benefits and damages, a drainage authority must determine that one of the conditions in Minn. Stat. § 103E.351, subd. 1 (2004), has been met.

***In re PERA Salary Determinations Affecting Retired & Active Employees of Duluth*, 820 N.W.2d 563 (Minn. App. Aug. 6, 2012) (A11-1330).**

1. The Public Employees Retirement Association’s interpretation of Minn. Stat. § 353.01, subd. 10, as it concerns the city’s salary-supplement payments, is invalid because the interpretation is an improper promulgation of a new rule. The association’s interpretation of that statute is subject to the rulemaking requirements of the Minnesota Administrative Procedure Act, is inconsistent with the plain meaning of the statute, and is not a longstanding interpretation of the statute.

2. The Public Employees Retirement Association’s interpretation of Minn. Stat. § 353.01, subd. 10(b)(2), as it concerns the city’s insurance-supplement payments, is not an improperly promulgated new rule. The association’s interpretation of that statute is consistent with the plain meaning of the statute.

### Alternative Dispute Resolution

***Garlyn, Inc. v. Auto-Owners Ins. Co.*, 814 N.W.2d 709 (Minn. App. Mar. 26, 2012) (A11-1520).**

1. The determination of whether amounts billed and amounts paid for auto-glass repair or replacement constitutes “the necessary cost, at local prices, to repair or replace the property or damaged parts with material of similar kind and quality” is a question of fact to be conclusively determined by the arbitrator.

2. The amount of the award on each individual claim, rather than the award representing the total of such awards made in an arbitration of consolidated individual claims, determines eligibility for preaward interest under Minn. Stat. § 549.09, subd. 1(b)(4) (2010).

### **Appellate Procedure**

***In re Welfare of Child of T.L.M. & M.J.S.*, 804 N.W.2d 374 (Minn. App. Oct. 3, 2011) (A11-1323).**

An appeal from a final, appealable order in a juvenile-protection proceeding must be served and filed within 20 days, as provided by Minn. R. Juv. Prot. P. 47.02, subd. 2. The 30-day provision of Minn. Stat. sec. 260C.415, subd. 1 (2010) does not apply.

***Aon Corp. v. Haskins*, 817 N.W.2d 737 (Minn. App. June 27, 2012) (A12-0495).**

In a civil appeal in which immediate appellate review of a nonfinal order is properly based on the collateral order doctrine, a party to a district court action that is neither an appellant nor a respondent on appeal but is aligned with an appellant may not obtain immediate appellate review of an otherwise nonappealable order by filing a notice of related appeal pursuant to Minn. R. Civ. App. P. 103.02, subd. 2, unless the nonappealable order presents issues that are inextricably intertwined with issues properly presented by an appellant's appeal.

***Haugen v. Superior Dev., Inc.*, 819 N.W.2d 715 (Minn. App. Aug 6, 2012) (A11-1888).**

2. Corporations must be represented by legal counsel when appearing before the Minnesota Court of Appeals.

(See page 4 for the first and third syllabus points for this case.)

### **Child Protection**

***In re Welfare of Child of M.K. & T.K.*, 805 N.W.2d 856 (Minn. App. Sept. 6, 2011) (A11-0553, A11-0554).**

A juvenile court abuses its discretion by denying parents' motions brought under Minn. R. Juv. Prot. P. 35.03, subd. 5(a), to withdraw their admissions to a petition alleging that their child is in need of protection or services when the admissions were coerced by the county's demand that parents admit to the petition in order for their child to receive needed services, the nature of the statutory grounds set forth in the petition was misrepresented to parents, and no evidence or admission established the child's need for

protection or services as a result of the existence of the statutory ground for the petition described to parents.

***In re Welfare of Children of J.R.B. & J.D.B.*, 805 N.W.2d 895 (Minn. App. Oct. 25, 2011), review denied (Minn. Jan. 6, 2012) (A11-0604, A11-0615).**

In termination of parental rights proceedings, appellate courts review the district court's findings of the underlying or basic facts to determine whether, in light of the clear-and-convincing evidence standard of review, those findings are clearly erroneous; appellate courts review the district court's findings of "ultimate facts" for an abuse of discretion.

***In re Welfare of Child of J.W. & G.P.*, 807 N.W.2d 441 (Minn. App. Nov. 28, 2011), review denied (Minn. Jan. 6, 2012) (A11-0814).**

A parent may rebut the statutory presumption of palpable unfitness in Minn. Stat. § 260C.301, subd. 1(b)(4) (2010), which is triggered if the parent's parental rights to one or more other children previously were involuntarily terminated, by introducing evidence that would justify a finding that the parent now is not palpably unfit.

***In re Welfare of Child of E.A.C.*, 812 N.W.2d 165 (Minn. App. Feb. 21, 2012), review denied (Minn. Mar. 27, 2012) (A11-1562).**

When a petition for return of custody under the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1916(a) (2006), is challenged, the district court must apply all subsections of 25 U.S.C. § 1912 (2006) to determine whether reuniting the child and parent is not in the child's best interests.

***In re Welfare of Child of J.K.T. & A.M.*, 814 N.W.2d 76 (Minn. App. May 21, 2012) (A11-1576).**

When a child dies pending appeal of a final order terminating his mother's parental rights, the appeal remains ripe for review under the collateral consequences exception to the mootness doctrine. The doctrine of abatement, which has not been adopted by the Minnesota Legislature or our supreme court, does not apply to a termination-of-parental-rights appeal.

### **Civil Procedure**

***Moen v. Sunstone Hotel Props., Inc.*, 818 N.W.2d 573 (Minn. App. July 23, 2012), review denied (Minn. Oct. 16, 2012) (A11-1093).**

A motion for a new trial not heard within 60 days under Minn. R. Civ. P. 59.03 may be dismissed by the district court; dismissal of a motion for a new trial for failure to

schedule a timely hearing limits the scope of appellate review to substantive questions of law.

### **Constitutional Law**

***In re Rental Dwelling License Held by Khan*, 804 N.W.2d 132 (Minn. App. Sept. 6, 2011) (A10-2211).**

Absent evidence that hearing officers have a direct, personal, substantial pecuniary interest in rendering decisions favorable to the municipality that hires and selects them, a landlord's due-process rights are not violated when such hearing officers preside over rental-license-revocation hearings.

***Haugen v. Superior Dev., Inc.*, 819 N.W.2d 715 (Minn. App. Aug 6, 2012) (A11-1888).**

1. Limits on the legislature's authority to affect the judicial department, arising from the constitution's separation-of-powers provision, apply to legislation that bears on the Minnesota Court of Appeals notwithstanding its having been established by legislation.

3. The requirement that employers but not unemployed individuals pay fees associated with appeals of unemployment-benefits decisions, under Minnesota Statutes section 268.105, subdivision 7 (2010), does not violate the equal protection clause of the Minnesota Constitution.

(See page 2 for second syllabus point for this case.)

***Moore v. Hoff*, 821 N.W.2d 591 (Minn. App. Aug. 20, 2012) (A11-1923).**

2. When speech protected by the First Amendment is intertwined with allegedly tortious conduct, courts must carefully and explicitly delineate the tortious conduct on which liability is based so as not to infringe on a defendant's constitutional rights. When there is no practical way to separate the tortious conduct from the protected speech, there is no liability as a matter of law.

(See page 12 for first syllabus point for this case.)

### **Contracts**

***Maday v. Grathwohl*, 805 N.W.2d 285 (Minn. App. Nov. 14, 2011) (A11-0721).**

A written agreement that includes an integration clause supersedes any preexisting oral agreements concerning the same subject matter.

***NHF Hog Mktg., Inc. v. Pork-Martin, LLP*, 811 N.W.2d 116 (Minn. App. Jan. 3, 2012), review denied (Minn. Mar. 20, 2012) (A11-1137).**

A buyer's damages under Minn. Stat. § 336.2-713 (2010) are limited to the buyer's actual damages when the breaching seller shows that the buyer's expected resale profit was less than market-differential damages and the buyer does not show a likelihood that the resale purchaser will enforce the resale contract.

***Baker v. Best Buy Stores, LP*, 812 N.W.2d 177 (Minn. App. Feb. 21, 2012), review denied (Minn. Apr. 25, 2012) (A11-0997).**

When provided in its unambiguous language, a service contract on a product expires on the occasion of the seller's decision to replace, rather than repair, the product.

***Columbia Cas. Co. v. 3M Co.*, 814 N.W.2d 33 (Minn. App. March 26, 2012), review denied (Minn. June 19, 2012) (A11-1376).**

A party may maintain both a claim for breach of contract and a claim for breach of the implied covenant of good faith and fair dealing based on the same conduct.

***Meriwether Minn. Land & Timber, LLC, v. State*, 818 N.W.2d 557 (Minn. App. July 2, 2012), review denied (Minn. Sept. 25, 2012) (A11-2162).**

The \$100,000 limit on 2010 payments (fiscal year 2011) under the Sustainable Forest Incentive Act, 2010 Minn. Laws 1st Spec. Sess. ch. 1, art. 13, § 4, at 2056, does not breach contractual rights or quasi-contractual rights under promissory estoppel; and does not violate constitutional provisions against impairment of contracts, takings without just compensation, or equal protection.

## **Family Law**

***Nelson v. Nelson*, 806 N.W.2d 870 (Minn. App. Dec. 5, 2011) (A10-2239).**

To enforce a marriage-dissolution judgment that awards one party a lien for a specific monetary amount payable at a particular time which the other party fails to pay, the district court has discretion to enter a personal judgment.

***Redleaf v. Redleaf*, 807 N.W.2d 731 (Minn. App. Dec. 12, 2011) (A11-0202, A11-0496).**

Minn. Stat. § 549.09, subd. 1(c)(2) (Supp. 2009), mandates a ten percent post-judgment interest rate on overdue marital-property-distribution payments of more than \$50,000.

***County of Grant v. Koser*, 809 N.W.2d 237 (Minn. App. Jan. 9, 2012) (A11-0746).**

Under the plain language of Minnesota's child-support statute, social security disability benefits paid to an obligee parent on behalf of joint children based on the obligor parent's eligibility must be credited toward the obligor parent's child-support obligation. The manner in which this credit is applied is within the district court's discretion.

***Jones v. Jarvinen*, 814 N.W.2d 45 (Minn. App. Apr. 30, 2012) (A11-1627).**

Governing statutes permit a district court to retroactively correct a child-care support order, based on actual child-care expenses incurred, for a period before the date of service of a motion to modify support.

***Zaldivar v. Rodriguez*, 819 N.W.2d 187 (Minn. App. July 30, 2012), review denied (Minn. Sept. 25, 2012) (A11-1632).**

A district court is not prohibited from holding an unauthorized alien in contempt of court for failure to pay child support, so long as the district court does not require the unauthorized alien to take any action that would subject him or her to criminal penalties or additional civil consequences.

### **Harassment Restraining Orders and Orders for Protection**

***Ekman v. Miller*, 812 N.W.2d 892 (Minn. App. Apr. 2, 2012) (A11-1169).**

The district court may extend an order for protection (OFP) or issue a new OFP upon a showing that the restrained party has violated an OFP. The petitioning party must show that the restrained party has violated the OFP and need not establish that the restrained party has been convicted of a violation of an OFP.

### **Insurance Coverage**

***Cisar v. Slyter*, 812 N.W.2d 151 (Minn. App. Jan. 17, 2012), review granted (Minn. Mar. 28, 2012), review vacated and appeal dismissed (Minn. Apr. 17, 2012) (A11-0303).**

Under Minnesota law, a homeowner's insurance policy must include a two-year statute of limitations. Under the statutes governing township mutual fire insurance companies, despite any provisions to the contrary, a two-year limitations period applies to actions for recovery of a claim brought under the portion of an insurance policy that constitutes homeowner's insurance. Homeowner's insurance is defined broadly under Minnesota insurance law and includes policies known as or generally described as homeowner's policies or dwelling-owner policies.

***Farm Bureau Mut. Ins. Co. v. Earthsoils, Inc.*, 812 N.W.2d 873 (Minn. App. Apr. 2, 2012), review denied (Minn. June 27, 2012) (A11-0693).**

Failure to achieve anticipated crop yield is economic loss, not physical injury to tangible property. A commercial general liability insurance policy that covers damages arising out of physical injury to tangible property does not cover claims based on failure to achieve anticipated crop yield unless that failure is the result of physical injury to the crop itself.

### **Jurisdiction and Procedure**

***John Ward Gillman Engraved June 20, 1775 Copper Printing Plate v. Heritage Auctions, Inc.*, 806 N.W.2d 861 (Minn. App. Nov. 7, 2011) (A11-0851).**

Under *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569 (1977), all assertions of in rem jurisdiction must satisfy the fairness standard set forth in *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154 (1945).

***Brenny v. Board of Regents of Univ. of Minn.*, 813 N.W.2d 417 (Minn. App. May 7, 2012) (A11-1339).**

To protect the autonomy of the University of Minnesota under the separation-of-powers doctrine, judicial review of a tortious-interference-with-contract-claim must be initiated by writ of certiorari when the claim is brought by a university employee against the employee's supervisor for wrongful conduct that occurred within the scope of employment.

### **Labor and Employment**

***Barker v. County of Lyon*, 813 N.W.2d 424 (Minn. App. May 7, 2012) (A11-1746).**

1. When an employer's policy manual includes a provision reserving to the employer the right to alter or eliminate provisions in the manual, an employee's continuing reliance on any provision is unreasonable as a matter of law.

2. When a post-retirement benefit is provided to employees who have retired while in active service of the employer, the right to that benefit does not vest unless and until an employee retires while in active service.

***Blumhardt v. Independent Sch. Dist. No. 361*, 814 N.W.2d 72 (Minn. App. May 14, 2012) (A11-1653).**

Under the Public Employment Labor Relations Act, a public employer must grant a leave of absence requested by a public employee who is an elected or appointed official of an exclusive representative for an organized group of the employer's personnel. But

this statutorily mandated leave does not extend to a public employee who is elected or appointed to serve an employee organization that is not the exclusive representative for these employees.

***In re Daley Farm of Lewiston*, 816 N.W.2d 671 (Minn. App. July 9, 2012) (A11-1788).**

The exemption in the Minnesota Fair Labor Standards Act for agricultural workers, Minn. Stat. § 177.23, subd. 7(2) (2010), does not apply to workers who are paid on an hourly basis.

### **Liens**

***Effrem v. Effrem*, 818 N.W.2d 546 (Minn. App. June 18, 2012) (A11-1539).**

Minn. Stat. § 481.13, subd. 1 (2010), does not allow for the inclusion in the amount of an attorney lien attorney's fees and costs associated with obtaining the attorney lien.

### **Local Government**

***Rochon Corp. v. City of St. Paul*, 814 N.W.2d 365 (Minn. App. May 7, 2012), review denied (Minn. July 17, 2012) (A11-1271).**

A prospective contractor who increases its bid on a municipal project after the public bids are opened has made a material and substantive change in its bid, such that allowing the bid violates public bidding law and renders the contractor's replacement bid invalid and the consequent contract void.

***Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172 (Minn. App. July 23, 2012) (A11-2270).**

A city may not circumvent the preemption provisions of the state building code by indirectly adopting its own building regulation through a "policy" rather than an ordinance or formal enactment. The state building code preempts such municipal policies to the same extent that it preempts municipalities' ordinances or formal enactments that differ from the uniform state code.

## **Probate**

***In re S.H. Bowman Trust*, 804 N.W.2d 361 (Minn. App. Sept. 12, 2011) (A11-0110).**

1. Under Minn. Stat. § 501B.86, subd. 3 (2008), a disclaimant's interest in property is indefeasibly fixed in quality when the interest is transmissible in every particular and in every sense.

2. A disclaimant who accepts payments of income from a trust is not barred by Minn. Stat. § 524.2-1106(b)(1) (2010) from disclaiming later payments of income from the trust.

***In re Estate of Neuman*, 819 N.W.2d 211 (Minn. App. Aug. 6, 2012) (A11-1695).**

A personal representative's employee-employer relationship with her co-personal representative does not relieve her of her fiduciary duty to act in the best interests of the estate or to protect the estate from her co-representative's self-dealing.

## **Real Property**

***Dimke v. Farr*, 802 N.W.2d 860 (Minn. App. Sept. 12, 2011), review denied (Minn. Nov. 22, 2011) (A11-0329).**

An "unfulfilled condition" of a purchase agreement is a threshold requirement that permits a buyer or a seller to invoke declaratory cancellation of a purchase agreement for residential real property under Minn. Stat. § 559.217, subd. 4 (2010). Absent an unfulfilled condition of the purchase agreement, a declaratory cancellation of a purchase agreement for residential real property is ineffective.

***Horodenski v. Lyndale Green Townhome Ass'n.*, 804 N.W.2d 366 (Minn. App. Sept. 19, 2011) (A11-0289).**

Under Minn. Stat. § 515B.3-115(e)(4) (2010), attorney fees that a unit-owners' association may recover "in connection with" the collection of assessments and enforcement of a common interest community's declaration instrument are not limited to fees incurred in a collection action or other action to enforce the declaration.

***Slattengren & Sons Props., LLC v. RTS River Bluff LLC*, 805 N.W.2d 279 (Minn. App. Oct. 11, 2011), review granted (Minn. Dec. 13, 2011), appeal dismissed (Minn. Mar. 7, 2012) (A11-0322).**

When a third-party lender's purchase-money mortgage and a vendor's purchase-money mortgage are taken as part of the same transaction, the mortgages arise simultaneously and the order in which the purchase-money mortgages are recorded establishes their priority.

***HSBC Mortg. Servs. v. Graikowski*, 812 N.W.2d 845 (Minn. App. Mar. 26, 2012), review denied (Minn. June 19, 2012) (A11-1456).**

A signing spouse is equitably estopped from challenging the validity of a mortgage under Minn. Stat. § 507.02 (2010) on the basis that the nonsigning spouse did not sign the mortgage, when (1) the signing spouse procured the mortgage through an intentional or negligent misrepresentation of fact, (2) the lender relied on the misrepresentation to its detriment, and (3) the signing spouse retained the benefits of the mortgage.

***Ortell v. City of Nowthen*, 814 N.W.2d 40 (Minn. App. Apr. 2, 2012) (A11-1155).**

Under Minn. Stat. § 462.357, subd. 1e(a)(2) (2010), a nonconformity may be continued until it is destroyed to the extent of greater than 50 percent of its value and no building permit is applied for within 180 days after the property is damaged. If a building permit is applied for within 180 days of the damage, the municipality may impose reasonable conditions on the building permit to mitigate any newly created impact on adjacent properties or water bodies. But if no building permit is applied for within 180 days of the damage, the nonconformity must end and any subsequent use or occupancy must be a conforming one.

***Gallaher v. Titler*, 812 N.W.2d 897 (Minn. App. Apr. 30, 2012), review denied (Minn. July 17, 2012) (A11-1338).**

An assessment-lien-foreclosure sale held on the 42nd day after the first day of publication of the notice of sale is valid under Minn. Stat. § 580.03 (2010).

Minnesota Statutes section 582.25(3)(a) (2010) applies to actions challenging the validity of an assessment-lien-foreclosure sale based on an alleged defect in the published notice of sale and therefore bars actions based on such an alleged defect unless objection to the defect is made within one year following expiration of the foreclosure-redemption period.

***Jensen Field Relocation Claims Jensen Field, Inc. v. Board of Regents of Univ. of Minn.*, 817 N.W.2d 724 (Minn. App. June 25, 2012) (A11-1942).**

1. A displacing agency under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (URA), 42 U.S.C. §§ 4601–55 (2006), does not violate Minn. Stat. §§ 117.012, subd. 1, 117.52, subd. 4 (2010), when it follows the procedures for appeal set forth in 49 C.F.R. § 24.10(b), (g)–(h) (2010), to satisfy the appeal rights of a person claiming a right to relocation benefits.

2. Under the URA, tenants are displaced persons when their landlord, which is the displacing agency, informs them that it will not renew their lease because of a project for which it has received federal funds.

3. Displaced persons are entitled to reimbursement for their estimated moving expenses when they inform the displacing agency of their intent to seek relocation

benefits three months before their displacement, elect a self-move under 49 C.F.R. § 24.301(d)(2) (2010), obtain one moving estimate, and the displacing agency thereafter provides no relocation assistance to the displaced persons.

***Big Lake Lumber v. Security Prop. Invs.*, 820 N.W.2d 253 (Minn. App. Aug. 27, 2012), *pet. for review filed* (Minn. Sept. 26, 2012) (A11-2220).**

To establish priority over a mortgage under the relation-back doctrine and Minn. Stat. § 514.05 (2010), a mechanic's-lien claimant must prove that its contribution of material or labor relates directly to one continuous project of improvement to the property, not merely to the overall project of improvement.

### **Remedies**

***Community First Bank v. First United Funding, LLC*, \_\_\_ N.W.2d \_\_\_, 2012 WL 2874048 (Minn. App. July 16, 2012) (A12-0040).**

In an equitable proceeding to compensate the victims of a Ponzi scheme, the district court has broad discretion to adopt a method that fairly and reasonably distributes the recovered funds.

### **Torts**

***Zimbovskiy v. Union Pac. R.R. Co.*, 812 N.W.2d 867 (Minn. App. Mar. 26, 2012) (A11-1329).**

1. To determine whether a state tort-law claim is preempted by the Federal Railroad Safety Act, courts may consider documents showing that safety enhancements at a railway crossing were paid for with federal funds, notwithstanding the provision of 23 U.S.C. § 409 (2006) that documents compiled or collected to identify, evaluate, or plan safety enhancement of railway crossings is not subject to discovery or admissible as evidence.

2. A vehicle is not a specific, individual hazard that imposes a duty to slow or stop a train unless the vehicle is stopped on the tracks.

***Renswick v. Wenzel*, 819 N.W.2d 198 (Minn. App. July 30, 2012), *review denied* (Minn. Oct. 16, 2012) (A11-1719).**

1. An invitee's entering a house that has an unlit entryway and stairway in close proximity to each other is not an act to which the doctrine of primary assumption of the risk applies to exempt the homeowner from liability for negligent failure to warn about the potentially dangerous condition.

2. An injured tort plaintiff's Medicare benefits in the form of payments for medical care or Medicare-negotiated discounts to reduce her medical bill are collateral sources that are excepted from the collateral-source offset provision of Minnesota Statutes section 548.251, subdivision 1, and, as such, they do not provide a basis to reduce her damages award.

***Moore v. Hoff*, 821 N.W.2d 591 (Minn. App. Aug. 20, 2012) (A11-1923).**

1. A claim for tortious interference with a contract or prospective business advantage cannot be based on conveying true information to a third party.

(See page 4 for second syllabus point for this case.)

### **Unemployment Benefits**

***Potter v. Northern Empire Pizza*, 805 N.W.2d 872 (Minn. App. Sept. 6, 2011), review denied (Minn. Nov. 15, 2011) (A10-1965).**

Because no single-incident exception to employment misconduct exists and employers may require employees to refrain from physical contact arising from workplace disputes, an employee's single-incident poking of his coworker during an argument constitutes employment misconduct under Minnesota Statutes section 268.095, subdivision 6(a) (2010).

***Peterson v. Northeast Bank*, 805 N.W.2d 878 (Minn. App. Oct. 11, 2011) (A11-0092).**

When a relator receives a settlement payment in an employment discrimination dispute that compensates relator for wages lost as a result of an allegedly wrongful discharge, the payment is for back pay under Minn. Stat. § 268.035, subd. 3 (2010), and must be deducted from the benefits that relator has already received under Minn. Stat. § 268.085, subd. 6(a) (2010).

***Cunningham v. Wal-Mart Assocs., Inc.*, 809 N.W.2d 231 (Minn. App. Dec. 27, 2011) (A11-0153).**

When an employer discharges an employee for conduct that is indisputably caused by the employee's inability to concentrate and multitask as a result of strokes that he suffered, the conduct is a "consequence of" a mental illness or impairment pursuant to Minn. Stat. § 268.095, subd. 6(b)(1) (2010), and the employee is eligible for unemployment benefits.

***Hasledalen v. Department of Emp't & Econ. Dev.*, 811 N.W.2d 133 (Minn. App. Jan. 23, 2012) (A11-1013).**

When a person applies for and receives unemployment benefits and subsequently applies for and receives Social Security old age benefits, the unemployment benefits must

be reduced by an amount equal to 50% of the Social Security benefit calculated on a weekly basis.

***Stassen v. Lone Mountain Truck Leasing, LLC*, 814 N.W.2d 25 (Minn. App. March 5, 2012) (A11-0954).**

If an employer uses the Minnesota Department of Employment and Economic Development's website to inform the department that its address has changed and the department later sends a notice of eligibility for unemployment benefits to the employer using a different address, the mailing does not trigger the twenty-day period for the employer to appeal the eligibility determination under Minnesota Statutes section 268.101, subdivision 2(f).

***Rowan v. Dream It, Inc.*, 812 N.W.2d 879 (Minn. App. Apr. 2, 2012) (A11-1135).**

When an employer in the construction industry encourages its employee to resign her employment and form a limited liability corporation (LLC), but does not inform the employee that she will no longer be eligible for unemployment benefits once she does so, the employer's failure to so disclose constitutes good reason to quit caused by the employer under Minn. Stat. § 268.095, subd. 3(a) (2010).

***Builders Commonwealth, Inc. v. Department of Emp't & Econ. Dev.*, 814 N.W.2d 49 (Minn. App. May 7, 2012) (A11-1307).**

Under Minnesota unemployment-insurance law, an employment relationship may exist between a worker cooperative and its members, obligating the cooperative to pay unemployment-insurance taxes.

***Kangas v. Industrial Welders & Machinists, Inc.*, 814 N.W.2d 97 (Minn. App. May 21, 2012) (A11-1207).**

An electronically transmitted administrative appeal from a determination by the Minnesota Department of Employment and Economic Development is "[a] written statement delivered" to the department under Minnesota Statutes section 268.103, subdivision 2(b), which perfects the appeal if the transmission occurs within the statutory appeal deadline.

## **PART II – CRIMINAL CASES AND CASES ON RELATED SUBJECTS**

### **Constitutional Law**

***State v. Johnson*, 811 N.W.2d 136 (Minn. App. Jan. 30, 2012), review denied (Minn. Mar. 28, 2012) (A11-0006).**

The Fifth Amendment does not prohibit the state, during its case-in-chief, from presenting evidence of a defendant's post-arrest, pre-*Miranda* silence when the state did not compel the defendant to speak or remain silent.

***Mitchell v. Smith*, 817 N.W.2d 742 (Minn. App. July 30, 2012) (A12-0077).**

A prison regulation that restricts an incarcerated inmate from visiting with the inmate's minor child when the inmate has been convicted of sex offenses involving minors and has refused to participate in sex-offender treatment does not abridge the inmate's substantive-due-process right to direct the care, custody, and control of the inmate's child.

***State v. Montermini*, 819 N.W.2d 447 (Minn. App. Aug. 13, 2012), review denied (Minn. Nov. 20, 2012) (A11-1543).**

A criminal defendant who pleads guilty to multiple offenses under a plea agreement in which the defendant acknowledges that the agreement will be rescinded if the plea is withdrawn on appeal and the defendant may be reprosecuted as if there had been no plea of guilty and no plea agreement, waives the constitutional protection against double jeopardy as to all charged offenses by successfully appealing one or more of the guilty pleas.

### **DWI & Implied Consent**

***State v. Coleman*, 808 N.W.2d 32 (Minn. App. Jan. 3, 2012), review denied (Minn. Mar. 28, 2012) (A10-1884).**

A felony conviction that is subsequently deemed to be a misdemeanor conviction pursuant to Minn. Stat. § 609.13 (2008) is a predicate felony for first-degree driving while impaired (DWI) under Minn. Stat. § 169A.24, subd. 1(3) (2008).

***State v. Wendorf*, 814 N.W.2d 359 (Minn. App. Mar. 19, 2012) (A11-0838).**

Minn. Stat. § 169.686, subd. 1(a) (Supp. 2009), as published by the Revisor of Statutes, does not violate due process.

***State v. Wiseman*, 816 N.W.2d 689 (Minn. App. July 16, 2012), review denied (Minn. Sept. 25, 2012) (A11-1191).**

Minnesota's chemical-test-refusal statute does not violate an individual's substantive-due-process rights because an individual does not have a fundamental right under the due-process clauses of the United States Constitution and Minnesota Constitution to passively or nonviolently refuse to submit to a constitutionally reasonable police search, and the imposition of criminal penalties for refusing to submit to a properly requested chemical test is a reasonable means to a permissible state objective.

### **Evidence**

***State v. Ards*, 816 N.W.2d 679 (Minn. App. July 16, 2012) (A11-1117).**

A police officer's testimony about an individual's alcohol impairment based on personal observation is not expert opinion testimony within the meaning of Minnesota Rule of Evidence 702.

### **Guilty Pleas**

***Sames v. State*, 805 N.W.2d 565 (Minn. App. Oct. 17, 2011), review denied (Minn. Dec. 21, 2011) (A11-0375).**

An attorney representing a criminal defendant does not provide constitutionally ineffective assistance of counsel by failing to inform the defendant that pleading guilty to a crime may cause the defendant to become ineligible to possess a firearm. The holding in *Padilla v. Kentucky*, --- U.S. ---, 130 S. Ct. 1473 (2010), which concerns the risk of deportation following a guilty plea, does not apply to the risk of becoming ineligible to possess a firearm.

### **Postconviction**

***Freeman v. State*, 804 N.W.2d 144 (Minn. App. Sept. 26, 2011), review denied (Minn. Dec. 13, 2011) (A11-0215).**

Postconviction relief is unavailable to a petty misdemeanor because a petty-misdemeanor offense is not a crime and the Minnesota Postconviction Relief Act by its plain language provides a remedy only to a person "convicted of a crime."

***Barnslater v. State*, 805 N.W.2d 910 (Minn. App. Nov. 21, 2011) (A11-0304).**

A convicted person's probation-revocation appeal that does not challenge his underlying conviction is not a direct appeal that, under *Knaffla*, bars his later petition for postconviction relief filed under Minnesota Statutes section 590.01 (2008).

***Yang v. State*, 805 N.W.2d 921 (Minn. App. Nov. 28, 2011), review granted and stayed (Minn. Jan. 17, 2011), stay vacated, review denied (Minn. Aug. 7, 2012) (A11-0400).**

1. Minn. Stat. § 590.01, subd. 4(c) (2010), bars a claim brought under Minn. Stat. § 590.01, subd. 4(b)(5) (2010), where the petition for postconviction relief is filed more than two years after the date of an event establishing a right to relief in the interests of justice.

2. When a court imposes a longer conditional-release term than was contemplated by the terms of the plea agreement and allegedly violates that agreement, a potential claim establishing a right to relief under Minn. Stat. § 590.01, subd. 4(b)(5), arises on the date the court imposed the increased conditional-release term.

***State v. Henry*, 809 N.W.2d 251 (Minn. App. Jan. 9, 2012) (A11-1600).**

In the absence of a motion or petition, a letter response by the sentencing judge to a prisoner's inquiry about fines imposed does not constitute an appealable order.

### **Pretrial Procedure**

***State v. Mulcahy*, 816 N.W.2d 644 (Minn. App. June 11, 2012) (A11-1136).**

Minn. Stat. § 629.59 (2010) (permitting district courts to forgive or reduce the penalty when a bail bond is forfeited) does not apply to the penalty imposed by Minn. R. Gen. Pract. 702(f) on the reinstatement of forfeited bonds when the petition for reinstatement is filed between 90 and 180 days from the date of forfeiture.

***State v. Spangler*, 816 N.W.2d 651 (Minn. App. June 18, 2012), review denied (Minn. Aug. 21, 2012) (A11-0797).**

A district court does not err by approving the parties' agreement in a criminal case to excuse a prospective juror prior to voir dire when that juror was the prosecuting attorney's next-door neighbor.

***State v. Hunter*, 815 N.W.2d 518 (Minn. App. July 2, 2012) (A11-1713).**

Whether a defendant has consented to the declaration of a mistrial is a factual question to be decided by the district court, reviewable on appeal for clear error.

***State v. Fellegy*, 819 N.W.2d 700 (Minn. App. July 11, 2012), review denied (Minn. Oct. 16, 2012) (A11-1097).**

The district court need not conduct an evidentiary hearing on a criminal defendant's pretrial motion to dismiss based on the defendant's claim under his right to equal protection that the charge arose from unconstitutional selective enforcement if the defendant has asserted facts that, even if proven, would not substantiate the claim. And a defendant's allegation that a different prosecutor in a different charging jurisdiction decided not to charge two individuals of a different race for the same offense that the defendant was charged with is not sufficient to substantiate an unconstitutional selective prosecution claim.

### **Search & Seizure**

***State v. Cox*, 807 N.W.2d 447 (Minn. App. Nov. 28, 2011) (A11-0386).**

Information from a law-enforcement mobile computer showing that a vehicle's registration has expired constitutes an objectively reasonable basis for an officer to stop a vehicle to investigate whether the vehicle's current license-plate tabs are stolen.

***State v. Heaton*, 812 N.W.2d 904 (Minn. App. May 7, 2012), review denied (Minn. July 17, 2012) (A11-0659).**

No more than reasonable suspicion is required to search a parolee's home when the search is conducted pursuant to a valid parole condition.

***State v. Yang*, 814 N.W.2d 716 (Minn. App. June 18, 2012) (A11-1008).**

Because the Minnesota handgun statute that prohibits a person from carrying a handgun "in a public place" defines "public place" only as government land or as private land that is clearly dedicated to the public for public use, police officers do not have reasonable suspicion to detain a man merely on a report that he possesses a gun at a private residence and on their finding him walking from that residence into its front yard.

***State v. Barajas*, 817 N.W.2d 204 (Minn. App. July 23, 2012), review denied (Minn. Oct. 16, 2012) (A11-0983).**

Because a person has a reasonable expectation of privacy in the concealed contents of a cellular telephone, a search of the contents by the police is constitutionally unreasonable unless the police obtain a warrant or demonstrate the existence of a recognized exception to the warrant requirement.

***Sarber v. Comm’r of Pub. Safety*, 819 N.W.2d 465 (Minn. App. Aug. 27, 2012) (A12-0110).**

A driver’s conduct in twice flashing the high-beam headlights of his vehicle at oncoming traffic is not an objective basis for an investigatory traffic stop when the record contains no evidence that the headlights projected “glaring rays . . . into the eyes of the oncoming driver” in a manner that blinded, impaired, or distracted another driver. Minn. Stat. § 169.61(b) (2010).

### **Sentencing**

***State v. Moody*, 806 N.W.2d 874 (Minn. App. Dec. 12, 2011), review denied (Minn. Mar. 28, 2012) (A11-0773).**

When a defendant pleads guilty pursuant to an agreement under which the state agrees to limit its jail recommendation and defendant consents to a stay of adjudication pursuant to Minn. Stat. § 152.18 (2008), a district court may impose jail time as a reasonable condition of the stay.

***State v. Robideau*, 817 N.W.2d 180 (Minn. App. June 25, 2012), review denied (Minn. Sept. 25, 2012) (A11-2135).**

Intentionally leaving the body of a murder victim to be discovered by the minor child of the victim justifies an upward durational departure from the presumptive sentence under the sentencing guidelines.

***Johnson v. State*, 820 N.W.2d 24 (Minn. App. Aug. 27, 2012) (A11-2226).**

A person confined in a private correctional facility is not an “inmate of a state correctional facility” subject to mandatory consecutive sentencing pursuant to Minn. Stat. § 609.2232 (2006).

### **Substantive Criminal Law**

***State v. Hormann*, 805 N.W.2d 883 (Minn. App. Oct. 19, 2011), review denied (Minn. Jan. 17, 2012) (A10-1872).**

A person with a presumptive marital-property interest and unfiled title interest in a motor vehicle may not be criminally prosecuted under Minn. Stat. § 626A.35, subd. 1 (2008) for installing a tracking device on that vehicle.

***Anderson v. State*, 806 N.W.2d 856 (Minn. App. Oct. 24, 2011), review denied (Minn. Jan. 17, 2012) (A11-0330).**

Second-degree burglary requires proof that a person entered the dwelling of another without consent, and committed a crime or intended to commit a crime while in the dwelling. The crime of fleeing a police officer in a motor vehicle is a sufficient independent crime for the purpose of establishing the offense of second-degree burglary, when the offender enters the dwelling place of another without consent in order to evade police.

***State v. Hansen*, 805 N.W.2d 915 (Minn. App. Nov. 21, 2011) (A11-0546).**

Minn. Stat. § 97B.328 (2010), which prohibits a hunter from using bait to hunt deer, does not prohibit a vegetable farmer, who has a normal and accepted agricultural practice of transporting discarded vegetables to a fallow field for use as fertilizer, from hunting within range of the discarded vegetables.

***State v. Nelson*, 806 N.W.2d 558 (Minn. App. Nov. 21, 2011), review denied (Minn. Feb. 14, 2012) (A10-1127).**

1. In a criminal vehicular homicide case in which the negligent conduct of two motor vehicle drivers intertwines to cause the death of one driver, the district court abuses its discretion by excluding evidence of the victim driver's alcohol consumption while admitting evidence of the defendant driver's alcohol consumption.

2. When the intertwined negligent conduct of two motor vehicle drivers results in charges of criminal vehicular homicide being brought against one driver, the district court's jury instruction must define causation to inform the jury that a guilty verdict requires that the defendant driver's conduct must have played a substantial part in bringing about the death or injury of the victim driver.

***State v. Pegelow*, 809 N.W.2d 245 (Minn. App. Jan. 9, 2012) (A11-0085).**

Under Minn. Stat. § 609.749, subd. 2(a)(1) (2008), evidence that a defendant's conduct meets the definition of harass in Minn. Stat. § 609.749, subd. 1 (2008), is insufficient to support a conviction of gross-misdemeanor harassment absent evidence that the defendant manifested a purpose or intent to injure another's person, property, or rights by the commission of an act that is unlawful independent of section 609.749.

***State v. Fitman*, 811 N.W.2d 120 (Minn. App. Jan. 23, 2012) (A11-0406).**

To convict a defendant for intentionally concealing a minor child from a person having the right to parenting time or custody under Minn. Stat. § 609.26, subd. 1(1) (2008), the state must prove that the child's whereabouts were unknown to and withheld from the person with the right to parenting time or custody and that the defendant hid the child to prevent that person from locating or contacting the child.

***State v. Gunderson*, 812 N.W.2d 156 (Minn. App. Feb. 6, 2012) (A11-0090).**

To be convicted of a felony for violating a harassment restraining order under Minn. Stat. § 609.748, subd. 6(d) (2008), the defendant must have intentionally engaged in prohibited conduct, knowing that such conduct was prohibited.

***State v. Nelson*, 812 N.W.2d 184 (Minn. App. Mar. 12, 2012) (A11-0294).**

The evidence is insufficient to sustain appellant's conviction of failing to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 3(b) (2008), because the state failed to prove beyond a reasonable doubt that appellant no longer was living at his registered primary address or that he had begun living at a new primary address.

***State v. Patterson*, 819 N.W.2d 462 (Minn. App. Aug. 20, 2012), review denied (Minn. Oct. 24, 2012) (A11-2095).**

Minn. Stat. § 243.166, subd. 1b(b) (2008) does not require persons with out-of-state convictions for offenses "arising out of the same set of circumstances" as offenses enumerated in the statute to register as predatory offenders.

### **Trial Procedure**

***State v. Caldwell*, 815 N.W.2d 512 (Minn. App. Apr. 16, 2012), review denied (Minn. Jun. 27, 2012) (A11-0292).**

The district court does not abuse its discretion by prohibiting defense counsel in a criminal trial from commenting on the state's failure to elicit an in-court identification of the defendant from a witness who previously identified the defendant.